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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/603,528	06/23/2000	HORST FARBER	21543	9899

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EXAMINER

FONTAINE, MONICA A

ART UNIT	PAPER NUMBER
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1732

DATE MAILED: 04/11/2003

6

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/603,528

Applicant(s)

FARBER, HORST

Examiner

Monica A Fontaine

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) 6-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 June 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of a method of making a tube in Paper No. 5 is acknowledged

Claims 6-9 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected sample tube, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 5. . The traversal is on the ground(s) that it is not possible to make the sample tube without a reshaping step after a molding step. This is not found persuasive because the shape of the product of any molding step depends on the shape of its mold cavity, therefore a sample tube having specific requirements could be made by a mold having corresponding features.

Also, because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Therefore, the requirement is still deemed proper and is therefore made FINAL.

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 3 recites the limitation "the bottom" in line 1. There is insufficient antecedent basis for this limitation in the claim. (It is not clear whether "the bottom" is referring to the intermediate bottom or the partial bottom, both in claim 1.)

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Guest (U.S. Patent 5,038,455). Guest shows that it is known to carry out a method of making a sample tube (Column 1, lines 38-44), comprising the steps of injection molding an intermediate tube in one piece with a cylindrical wall and an intermediate bottom spaced at the ends thereof (Column 3, lines 35-36), and heating an end of said intermediate tube and pressing edges of said end inwardly toward an axis of said intermediate tube to thermally reform said tube and provide at least a partial bottom for the sample tube (Column 3, lines 45-48, 56-60, 63-67).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Klimaszewski, Jr. (U.S. Patent 3,929,943). Klimaszewski, Jr. shows that it is known to carry out a method of making a sample tube (Column 1, lines 11-12), comprising the steps of injection molding an intermediate tube in one piece with a cylindrical wall and an intermediate bottom spaced at the ends thereof (Column 1, lines 38-40), and heating an end of said intermediate tube and pressing edges of said end inwardly toward an axis of said intermediate tube to thermally reform said tube and provide at least a partial bottom for the sample tube (Column 1, lines 58-65). It would have been obvious to one of ordinary skill in the art at the time the invention was made to move Klimaszewski, Jr.'s bottom to be between the ends of the tube in order to maintain a shape of the bottom while an end of the tube is reshaped.

Claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guest, in view of Huang (U.S. Patent 6,179,153).

Regarding Claim 2, Guest shows the basic process as claimed as discussed above, but does not show an intermediate bottom portion is given a conical shape during the injection molding thereof. Huang shows that it is known for an intermediate bottom portion between the ends of a tube to have a conical shape (Figure 3, element 14; Column 2, line 39). Huang and Guest are combinable because they are concerned with a similar technical field, namely, that of

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tubes having a protruding middle portion. It would have been obvious to one of ordinary skill in the art at the time the invention was made to extend Guest's intermediate bottom portion to Huang's intermediate wall in order to provide a retaining area for liquid.

Regarding Claim 3, Guest shows the basic process as claimed as discussed above, including a method wherein the bottom of the sample tube is rounded by pressing a heated stamp thereagainst to cause said bottom of said sample tube to be shaped to a concavity of a concave recess of said stamp (Figure 3; Column 3, lines 63-67), meeting applicant's claim.

Regarding Claim 4, Guest shows the process as claimed as discussed above, including a method wherein a bottom portion of a sample tube is only partly closed by a stamp (Figure 3; Column 3, lines 63-67), meeting applicant's claim.

Regarding Claim 5, Guest shows the process as claimed as discussed above, including a method wherein an intermediate tube is heated to a temperature at least equal to the flow temperature of a thermoplastic synthetic resin constituting said intermediate tube (Column 3, lines 56-60), meeting applicant's claim.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents are cited to further show the state of the art with regard to making tubular bodes in general:

U.S. Patent 4,719,069 to Reymann et al.

U.S. Patent 4,590,028 to Rosenkranz et al.

U.S. Patent 5,038,455 to Guest

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monica A Fontaine whose telephone number is 703-305-7239. The examiner can normally be reached on Monday-Friday 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rick Crispino can be reached on 703-308-3853. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9310 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

maf
April 7, 2003



JILL L. HEITBRINK
PRIMARY EXAMINER
ART UNIT 137 1732

4/9/03